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The obligation to extradite or prosecute (*aut dedere aut judicare*)

Comments and information received from Governments

I. Introduction

1. The present report has been prepared pursuant to General Assembly resolution 61/34 of 4 December 2006, in which the Assembly, inter alia, invited Governments to provide to the International Law Commission information on legislation and practice regarding the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*)".

2. At its fifty-eighth session in 2006, the Commission decided in accordance with article 19(2) of its Statute to request, through the Secretary-General, Governments to submit information concerning their legislation and practice, particularly more contemporary, with regard to the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*)". More specifically, Governments were requested to provide information concerning:

"(a) International treaties by which a State is bound, containing the obligation to extradite or prosecute, and reservation made by that State to limit the application of this obligation;

"(b) Domestic legal regulation adopted and applied by a State, including constitutional provisions and penal codes of criminal procedures, concerning the obligation to extradite or prosecute (*aut dedere aut judicare*);

"(c) Judicial practice of a State reflecting the application of the obligation *aut dedere aut judicare*;

"(d) Crimes or offences to which the principle of the obligation *aut dedere aut judicare* is applied in the legislation or practice of a State."[1]

[1] See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), para. 30.

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3. As at 1 March 2007 written observations were received from the following seven States: Austria, Croatia, Japan, Monaco, Qatar, Thailand and the United Kingdom of Great Britain and Northern Ireland. Additional information received will be reproduced as addenda to the present report.

4. The responses from Governments have been organized around the four clusters of information referred to in paragraph 2 above.

II. Comments and information received from Governments

A. International treaties by which a State is bound, containing the obligation to extradite or prosecute (*aut dedere aut judicare*), and reservations made by that State to limit the application of this obligation

Austria

5. The following bilateral treaties concluded by Austria contain the obligation *aut dedere aut judicare*:

(a) The Treaty between the Government of the Republic of Austria and the Government of Canada on Extradition, signed on 5 October 1998 in Ottawa, Federal Law Gazette III No. 159/2000. The relevant article 3 paragraph 2 lit. a and b read as follows:

> "Article 3(2): Extradition may be refused in any of the following circumstances:
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> if the person whose extradition is requested is a national of the Requested State. Where the Requested State refuses to extradite a national of that State it shall, if the other State so requests, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been requested may be taken;
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> if the offence for which extradition is requested is subject to the jurisdiction of the Requested State and that State will prosecute that offence; [...]"

(b) The Extradition Treaty between the Government of the Republic of Austria and the Government of the United States of America, signed on 8 January 1998 in Washington, D.C., Federal Law Gazette III No. 216/1999. The relevant article 3 paragraph 2 reads as follows:

> "Article 3 (2): If extradition is refused solely on the basis of the nationality of the person sought, the Requested State shall, at the request of the Requesting State, submit the case to its authorities for prosecution."

6. Austria has made no reservations to relevant multilateral treaties which limit the application of the obligation *aut dedere aut judicare*.

Croatia

7. International treaties containing an obligation to extradite or prosecute for the Republic of Croatia are: the International Convention for the Suppression of

Counterfeiting Currency, Geneva, 1929;[2] the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, New York, 1950;[3] the European Convention on Extradition, Paris, 1957;[4] the Single Convention on Narcotic Drugs, New York, 1961;[5] the Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, 1970;[6] the Convention on Psychotropic Substances, Vienna, 1971;[7] the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 1971;[8] the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, New York, 1973;[9] the European Convention on the Suppression of Terrorism, Strasbourg, 1977;[10] the International Convention against the Taking of Hostages, New York, 1979;[11] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 1984;[12] the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 1988;[13] the Convention on the Safety of United Nations and Associated Personnel, New York, 1994;[14] the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, New York, 1989;[15] the International Convention for the Suppression of Terrorist Bombings, New York, 1997;[16] the International Convention for the Suppression of the Financing of Terrorism, New York, 1999;[17] the Criminal Law Convention on Corruption, Strasbourg, 1999;[18] the United Nations Convention against Transnational Organized Crime, New York, 2000;[19] the Convention on Cybercrime, Strasbourg, 2001;[20] and the United Nations Convention against Corruption, New York, 2003.[21]

Japan

8. Japan has concluded the following multilateral treaties containing the obligation to extradite or prosecute, and it has made no reservations to limit the application of the obligation in any of these treaties: the Convention for the Suppression of Illicit Traffic in Dangerous Drugs, Geneva, 1936;[22] the Geneva Conventions of 1949 (the Convention for the Amelioration of the Condition of the

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[2] League of Nations Treaty Series, vol. 112, No. 2623.
[3] United Nations, *Treaty Series*, vol. 96, No. 1342.
[4] European Treaty Series No. 24.
[5] United Nations, *Treaty Series*, vol. 520, No. 7515.
[6] Ibid., vol. 860, No. 12325.
[7] Ibid., vol. 1019, No. 14956.
[8] Ibid., vol. 974, No. 14118.
[9] Ibid., vol. 1035, No. 15410.
[10] Ibid., vol. 1137, No. 17828.
[11] Ibid., vol. 1316, No. 21931.
[12] Ibid., vol. 1465, No. 24841.
[13] Ibid., vol. 1582, No. 27627.
[14] Ibid., vol. 2051, No. 35457.
[15] Ibid., vol. 2163, No. 37789.
[16] Ibid., vol. 2149, No. 37517.
[17] General Assembly resolution 54/109 of 9 December 1999.
[18] European Treaty Series No. 173.
[19] General Assembly resolution 55/25 of 15 November 2000.
[20] European Treaty Series No. 185.
[21] General Assembly resolution 58/4 of 31 October 2003.
[22] League of Nations, *Treaty Series*, vol. 198, No. 4648.

Wounded and Sick in the Armed Forces in the Field, 1949;[23] the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, 1949;[24] the Convention relative to the Treatment of Prisoners of War, 1949;[25] and the Convention relative to the Protection of Civilian Persons in Time of War, 1949);[26] the Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others, New York, 1950; the Convention on the High Seas, Geneva, 1958;[27] the Single Convention on Narcotic Drugs, New York, 1961; the Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, 1970; the Convention on Psychotropic Substances, Vienna 1971; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 1971; the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, New York, 1973; the Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to Protection of Victims of International Armed Conflict, Geneva, 1977;[28] the International Convention against the Taking of Hostages, New York, 1979; the Convention on the Physical Protection of Nuclear Material, Vienna and New York, 1980;[29] the United Nations Convention on the Law of the Sea, Montego Bay, 1982;[30] the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome, 1988;[31] the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, Rome, 1988;[31] the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 1988; the Convention on the Safety of United Nations and Associated Personnel, New York, 1994; the International Convention for the Suppression of Terrorist Bombings, New York, 1997; and the International Convention for the Suppression of the Financing of Terrorism, New York, 1999.

9. Japan has also concluded bilateral extradition treaties with the United States of America and the Republic of Korea. However, they both stipulate only an obligation to extradite under certain conditions,[32] but not "the obligation to extradite or prosecute".

Monaco

10. Monaco is party to the following international treaties containing a disposition on the obligation to extradite or prosecute, which have been given effect in the national legislation through sovereign ordinances: the Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, 1970;[33] the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal,

[23] United Nations, *Treaty Series*, vol. 75, No. 970.
[24] Ibid., No. 971.
[25] Ibid., No. 972.
[26] Ibid., No. 973.
[27] Ibid., vol. 450, No. 6465.
[28] Ibid., vol. 1125, No. 17512.
[29] Ibid., vol. 1456, No. 24631.
[30] Ibid., vol. 1833, No. 31363.
[31] Ibid., vol. 1678, No. 29004.
[32] The complete text of the Treaty, provided by the Government of Japan, is available for consultation at the Codification Division of the Office of Legal Affairs of the United Nations.
[33] Sovereign ordinances No. 7.962 of 24 April 1984 and No. 15.655 of 7 February 2003.

1971;[34] the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, New York, 1973;[35] the International Convention against the Taking of Hostages, New York, 1979;[36] the Convention on the Physical Protection of Nuclear Material, 1980;[37] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 1984;[38] the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 1988;[39] the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (Maritime Safety Navigation Convention);[40] the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Montreal Convention, 1988 (Montreal Protocol);[41] the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988;[42] the International Convention for the Suppression of Terrorist Bombings, New York, 1997;[43] the International Convention for the Suppression of the Financing of Terrorism, New York, 1999;[44] the United Nations Convention against Transnational Organized Crime, New York, 2000;[45] the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000, supplementary to the United Nations Convention against Transnational Organized Crime;[45] the Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000, supplementary to the United Nations Convention against Transnational Organized Crime.[46]

11. Furthermore, Monaco is Party to 17 bilateral treaties on extradition with the following countries: Australia, Austria, Belgium, Czechoslovakia, Denmark, France, Germany, Italy, Liberia, the Netherlands, Russia, Spain, Switzerland, the United Kingdom and the United States. Most of these treaties were concluded at the end of the nineteenth or the beginning of the twentieth century. Accordingly, they provide an exhaustive list of offences for which a person may be extradited without reference to a minimum sentence that may be incurred, as it is the case in modern conventions.

12. Some of these bilateral treaties provide for the possibility to prosecute a person if extradition is refused on the ground of the nationality of the person requested, as for example, article 5 of the Convention between Monaco and Italy of 26 March 1866, as amended on 23 December 1896; article 5 of the Convention between Monaco and Australia of 19 October 1988; article 6 of the Convention between Monaco and France of 11 May 1992; and article 5 of the Convention between Monaco and Belgium of 29 June 1874.

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[34] Sovereign ordinances No. 7.964 of 24 April 1984 and No. 15.655 of 7 February 2003.
[35] Sovereign ordinances No. 15.638 of 24 January 2003 and No. 15.655 of 7 February 2003.
[36] Sovereign ordinances No. 15.157 of 20 December 2001 and No. 15.655 of 7 February 2003.
[37] Sovereign ordinances No. 12.093 of 28 November 1996 and No. 15.655 of 7 February 2003.
[38] Sovereign ordinances No. 10.542 of 14 May 1992.
[39] Sovereign ordinance of 3 July 1991.
[40] Sovereign ordinance No. 15.322 of 8 April 2002.
[41] Sovereign ordinances No. 11.177 of 10 February 1994 and No. 15.655 of 7 February 2003.
[42] Sovereign ordinance No. 15.323 of 8 April 2002.
[43] Sovereign ordinances No. 15.083 and No. 15.088 of 30 October 2001 and their annex.
[44] Sovereign ordinance No. 15.319 of 8 April 2002.
[45] Sovereign ordinance No. 605 of 1 August 2006.
[46] General Assembly resolution 55/25 of 15 November 2000 — Sovereign ordinance No. 605 of 1 August 2006.

Qatar

13. There exist a number of multilateral and bilateral conventions ratified by the State of Qatar which relate to legal and judicial cooperation, the extradition of criminals and the exchange of information relating thereto. Qatar has also signed others and yet others are currently being studied.

14. Qatar has acceded to the following multilateral agreements: the International Convention against the Taking of Hostages, 1979; the Convention on Psychotropic Substances, 1971; the International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973;[47] the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973; the Convention on the Physical Protection of Nuclear Material, 1980; the Arab Convention on Judicial Cooperation, 1983; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988; the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988; the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988; and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989.

15. Qatar has also ratified the following bilateral agreements: the Agreement on Security Cooperation and the Extradition of Criminals with the Kingdom of Saudi Arabia, 1982; the Memorandum of Understanding on Security Cooperation with the French Republic, 1996; and the Agreement on Security Cooperation with the Republic of Yemen, 2000.

16. Finally, Qatar has signed the following bilateral agreements: the Memorandum of Understanding between the Ministry of the Interior of the State of Qatar and the Ministry of the Interior of the Islamic Republic of Iran on Combating Narcotics and Psychotropic Agents, 1999; and the Memorandum of Understanding on Security Cooperation and Coordination between the Ministry of the Interior of the State of Qatar and the Ministry of the Interior of the United Arab Emirates.

Thailand

17. International treaties by which Thailand is bound without any reservation to limit the application of the obligation to extradite or prosecute (*aut dedere aut judicare*) could be set out in two main groups, namely: (a) in relation to offences relating to hijacking: the Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo, 1963;[48] Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, 1970; and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 1971; and (b) in relation to narcotic drug offences: the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol; and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

[47] United Nations, *Treaty Series*, vol. 1015, No. 14861.
[48] Ibid., vol. 704, No. 10106.

United Kingdom[49]

18. The United Kingdom is party to the following treaties containing the obligation to extradite or prosecute; the Geneva Conventions of 1949; the Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, 1970; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 1971; the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, New York, 1973; the European Convention on the Suppression of Terrorism, Strasbourg, 1977; the International Convention against the Taking of Hostages, New York, 1979; the Convention on the Physical Protection of Nuclear Material, 1980; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 1984; the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 1988; the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Montreal Convention, 1988 (Montreal Protocol); the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (Maritime Safety Navigation Convention); the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988; the Convention on the Safety of United Nations and Associated Personnel, New York, 1994; the International Convention for the Suppression of Terrorist Bombings, New York, 1997; the International Convention for the Suppression of the Financing of Terrorism, New York, 1999; the United Nations Convention against Transnational Organized Crime, New York, 2000; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000, supplementary to the United Nations Convention against Transnational Organized Crime; the Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000, supplementary to the United Nations Convention against Transnational Organized Crime; and the United Nations Convention against Corruption, New York, 2003.

19. The United Kingdom also noted that it is party to the Convention on the Prevention and Punishment of the Crime of Genocide, 1948[50] and the Convention on Offences and Certain Acts Committed on Board Aircraft, 1963.[51] These conventions did not contain an obligation to extradite or prosecute, but required States to establish jurisdiction in respect of other offences.

20. The United Kingdom has also signed but not yet ratified the Protocol amending the European Convention on the Suppression of Terrorism;[52] and the International Convention for the Suppression of Acts of Nuclear Terrorism, 2005.[53]

[49] The United Kingdom noted that its response does not address issues and/or cases regarding the European Arrest Warrant which has extradition implications for participating States.

[50] United Nations, *Treaty Series*, vol. 78, No. 1021.

[51] Ibid., vol. 704, No. 10106.

[52] European Treaty Series No. 190.

[53] General Assembly resolution 59/290 of 13 April 2005.

B. Domestic legal regulation adopted and applied by a State, including constitutional provisions and penal codes of criminal procedures, concerning the obligation to extradite or prosecute

Austria

21. Austria noted that the relevant Austrian legislation has been summarized by Special Rapporteur Zdzislaw Galicki in paragraph 44 of his preliminary report (A/CN.4/571).

Croatia

22. The Law on International Legal Assistance in Criminal Affairs[54] provides that when an extradition from the Republic of Croatia is not permissible, a national judicial body may, at the request of a foreign judicial body, take over criminal prosecution for an offence committed abroad.[55] The Law does not make extradition conditional upon the existence of an extradition agreement with the requesting State and, consequently, it does not require the implementation of the *aut dedere aut judicare* principle, but in such a case reciprocity is required, i.e. the request will be granted if on the basis of the assurances presented by the requesting State it can be expected that this State would grant a comparable request made by a Croatian judicial body.

Monaco

23. Monaco provided the national legislation No. 1222 of 28 December 1999 on extradition.[56] This law establishes a general legal framework for extradition procedure and it applies in the absence of a treaty or of a specific provision in that regard. The application of the principle *aut dedere aut judicare* is closely linked with the various grounds of refusal of extradition on which the requested State can rely upon. Article 6 of the Law 1222 is fundamental in this regard as it provides that extradition may be refused if the offence for which extradition is requested has been committed in Monaco, or is prosecuted in Monaco, or has been already judged in a third State. Article 6 also provides for refusal when the offence for which extradition is requested is subject to a capital penalty in the legislation of the requesting State, or when the alleged offender may be subject to treatment harming physical integrity.

24. These limitations are consistent with provisions of national legislation establishing the jurisdiction of the Courts of Monaco on criminal matters (articles 7 to 10 of the Code of Penal Procedure).

25. The principle *aut dedere aut judicare* is implemented when extradition is refused because of the nationality of the alleged offender. Article 7 of Law 1222 provides that the Principality of Monaco does not extradite its own nationals. However, when the refusal of extradition is based on the nationality of the person requested, upon request of the requesting State, the case is transmitted to the Prosecutor General who may prosecute the person if necessary. The conditions of application of the principle are that the requesting State has to demand that the

[54] Official Gazette of the Republic of Croatia /NN/178/04, in effect since 1 July 2005.

[55] Chapter IV — article 62 — Takeover and cession of prosecution.

[56] The full texts in their original French version are available for consultation at the Codification Division of the Office of Legal Affairs of the United Nations.

person should be tried, and that it transmits all the documents, information and relevant evidence regarding the offence. Thereafter, the requested State is under the obligation to inform the requesting State of the follow-up of the demand.

26. Article 7 of the Law 1222 is not deemed to suppress the power of the Prosecutor of Monaco to decide on the opportunity to prosecute, except when such an obligation results directly from international treaties, as for example, the agreements between Switzerland and Monaco or from other multilateral treaties.

27. When extradition is refused on other grounds, inter alia, when the offence has a military, political or fiscal nature, or when the offence has been definitively prosecuted and judged in Monaco, or when the offence, or its prosecution is limited by statute under Monegasque legislation or under the legislation of the requesting State, the principle *aut dedere aut judicare* will be applied only when the Courts of Monaco have jurisdiction on foreigners for offences committed abroad, as established by articles 7 to 10 of the Code of Penal Procedure.[57]

28. Finally, article 265 (5) of the Penal Code, extends the jurisdiction of Monegasque Courts regarding the organization or the facilitation of sexual exploitation of minors (18 years old) committed inside or outside the territory of Monaco.

Qatar

29. The Qatari Code of Criminal Procedures promulgated by Act No. 23 of 2004, contains a chapter, comprising articles 408 to 424, which is devoted to the question of accused and convicted persons. The most important provisions are the following:[58]

"(a) Article 409: It is a prerequisite for the extradition of persons:

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[57] Article 7 of the Code of Penal Procedure: "The following parties can be prosecuted and sentenced in the Principality:
- An alien who has, outside the territory of the Principality, committed a crime against State security, counterfeited national legal tender, national identification documents or currency, either paper or other, which has entered State coffers, or who has committed a crime or offence against agents, diplomatic or consular premises or property of Monaco,
- An alien who is the co-perpetrator of or accomplice to any crime committed outside the territory of the Principality by a Monegasque who is being prosecuted or has been sentenced in the Principality for the crime in question."

Article 8: "The following parties can be prosecuted and sentenced in the Principality:
- Any person who is an accomplice on the territory of the Principality to a crime or offence committed abroad, if the issue of complicity is provided for in both the relevant foreign law and in Monegasque law, on the condition that the main act has been certified by a definitive decision of the foreign jurisdiction,
- Anyone who commits acts outside the territory of the Principality qualified as crimes or offences constituting torture as defined in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted at New York on 10 December 1984, if he or she is found to be in the Principality."

Article 9: "An alien can be prosecuted and sentenced in the Principality if he or she has committed one of the following outside its territory:
- a crime or offence against a Monegasque,
- a crime or offence against another alien, if the alien is found in the Principality in possession of items acquired through the commission of the violation."

[58] The translation from the Arabic original version has been made by the Secretariat of the United Nations.

"– That the offence for which extradition is requested has been committed within the territory of the State requesting the extradition or has been committed outside the territory of the State of Qatar and the State requesting the extradition, provided that the act is punishable under the laws of the requesting State if committed outside its territory;

"– That the offence is a felony or misdemeanour punishable under both Qatari law and the law of the State requesting the extradition by a custodial penalty of at least two years or a more severe penalty, or that the person whose extradition is requested on the grounds of such offence has been sentenced to imprisonment for a term of at least six years;

"If the act is not punishable under the laws of the State of Qatar, or the penalty established for the offence in the State requesting the extradition has no equivalent in the State of Qatar, extradition shall not be compulsory unless the person whose extradition is requested is a national of the State requesting the extradition or a national of another State that establishes the same penalty;

"If extradition is requested for more than one offence, extradition shall be permissible only with regard to those offences which satisfy the conditions set forth above.

"(b) Article 410: Extradition is not permissible in the following cases:

"(1) If the person whose extradition is requested is a Qatari national;

"(2) If the offence for which extradition is requested is a political offence or is connected with a political offence, or the person whose extradition is requested is a beneficiary of political asylum at the time of submission of the request for extradition;

"(3) If the offence for which extradition is requested is limited to breaches of military obligations;

"(4) If there exist serious grounds for believing that the extradition request was submitted for the purpose of trying or punishing the person on the basis of considerations relating to race, religion, nationality or political views, or the existence of any such consideration is likely to be detrimental to the position of the person whose extradition is requested;

(5) If the person whose extradition is requested has already been tried for the same offence, a judgement has been handed down and he has satisfied his penalty, or the criminal action or the penalty has expired or become null and void owing to the passage of time or the granting of pardon in accordance with Qatari law or the law of the State requesting the extradition;

(6) If Qatari law permits the trial of the person whose extradition is requested before the judicial authorities in Qatar for the offence for which extradition is requested."

30. Moreover, some provisions of the Qatari Penal Code of 2004 apply to international terrorist offences. Article 17 provides as follows:

"The provisions of this Code apply to anyone present in the State after having committed abroad, whether as principal or accessory, any crime of trafficking in drugs or in persons or any international crime of piracy or terrorism."

31. And, according to article 18 of the said Code:

"Any Qatari who, while outside Qatar, commits an act considered hereunder as a felony or a misdemeanour shall be punished in accordance with the provisions of this Code if he returns to Qatar and the act is punishable under the law of the country in which it was committed."

On the basis of the foregoing, the Penal Code subjects all persons (Qataris, residents and foreigners), if they are present in the State, to the jurisdiction of the Qatari courts with regard to specific offences, including international terrorism, whether committed inside or outside Qatar.

32. Furthermore, there is also the Act No. 28 of 2002 on combating money-laundering, with article 17 providing:

"The crime of money-laundering is one of the offences that permit of legal assistance, coordination, mutual cooperation and extradition of offenders under the provisions of agreements concluded or acceded to by the State."

33. Finally, article 57 of the Permanent Constitution of the State of Qatar provides as follows:

"The extradition of political refugees is prohibited, and the law stipulates the conditions governing the granting of political asylum."

Thailand

34. The Act on Measures for the Suppression of Offenders in an Offence relating to Narcotics of 1991 was enacted to implement the conventions relating to narcotic drug offences to obligate Thailand to grant extradition upon the basis of these multilateral treaties where the obligation to prosecute or extradite (*aut dedere aut judicare*) is operated.

United Kingdom

35. The United Kingdom does not have any specific legal regulations concerning the obligation to extradite or prosecute. Section 193 of the Extradition Act of 2003 allows the United Kingdom to extradite for trial when requested by another party to an international convention and where the conduct in question is covered by the provisions of that convention.

36. The United Kingdom has several statutory provisions establishing jurisdiction for specified crimes, thus enabling the relevant national authorities to prosecute offences. Implementing legislation for the international treaties by which the United Kingdom is bound includes: the Geneva Conventions Act of 1957; the Part I of the Aviation and Security Act of 1982; the Internationally Protected Persons Act of 1982; the Suppression of Terrorism Act of 1978; the Taking of Hostages Act of 1982; the Nuclear Material (Offences) Act of 1983; Section 134 of the Criminal Justice Act of 1988; Section 21 of the Criminal Justice (International Cooperation) Act of 1990; the Parts I and II of the Aviation and Maritime Security Act of 1990;

the United Nations Personnel Act of 1997; the Part VI of the Terrorism Act of 2000; and the Chapter 15 of the Serious Organised Crime and Police Act of 2005.

C. Judicial practice of a State reflecting the application of the obligation *aut dedere aut judicare*

Austria

37. The principle *aut dedere aut judicare* plays a crucial role in the Austrian practice. According to section 65 paragraph 1 no. 2 of the Austrian Penal Code, the Public Prosecutor has to examine the institution of proceedings in Austria if the extradition of a suspect cannot be granted for reasons other than the nature or characteristics of the offence.[59] However, the court decisions instituting proceedings in Austria following the refusal of extradition do not explicitly refer to the above-mentioned provisions. For this reason, no court decisions referring explicitly to section 65 of the Austrian Penal Code or comparable provisions can be provided. The lack of court decisions therefore does not reflect the great importance of the principle *aut dedere aut judicare* in Austrian judicial practice.

Croatia

38. In the criminal prosecution taken over from another State, the accused is tried as if the offence had been committed in the Republic of Croatia. However, foreign law is applicable when it is more lenient on the accused, to honour the principle that the transfer of prosecution between States must not aggravate the position of the accused. Every investigative action undertaken by a foreign judicial body under the law of the requesting State will engender a corresponding investigative action under the law of the Republic of Croatia, unless it runs contrary to the principles of the national legal order, the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms,[60] and the International Covenant on Civil and Political Rights.[61]

Monaco

39. Monaco courts are rigorously applying the rules contained in its law on extradition No. 1222. Monaco is committed to fight against transnational crimes in an efficient manner, and to promote the largest and the most effective international cooperation, as exemplified by the judgment of the Appeal Court, dated 12 April 2001.[62] In this judgment, the Appeal Court allowed the extradition of a Russian national requested by the Russian Federation for drug trafficking. In order to do so, the Court carefully applied the provisions contained in the law on extradition No. 1222, the bilateral convention between Monaco and Russia of 5 September 1888, and the provisions on extradition contained in the United Nations Convention

[59] See also section 17 paragraph 3 of the Federal Law on judicial cooperation in penal matters with the Member States of the European Union, Federal Law Gazette I No. 36/2004, implementing the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ L 190, 18.7.2002, p. 1.

[60] European Treaty Series No. 5.

[61] General Assembly resolution 2200 A (XXI).

[62] The judgment dated 12 April 2001 in its original French version is available for consultation at the Codification Division, Office of Legal Affairs of the United Nations.

against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, of 20 December 1988, to which the Russian Federation and Monaco are both parties. It concluded that the extradition request by the Russian Federation fully complied with the procedural and substantive requirements provided in those instruments, namely, the request had been transmitted through diplomatic channel, the judge had ascertained the identity of the person arrested and notified to him the extradition procedure, an interpreter was present during the hearing, all relevant documents had been duly translated, and his arrest had been made lawfully. Furthermore, the grounds for the request of extradition were contained in the United Nations Convention of 1988 and therefore, were deemed included in the extradition convention between Monaco and Russia of 5 September 1888. Moreover, there was no other basis to refuse such an extradition as the offence did not have any military, fiscal, or political nature, it was not prosecuted in Monaco courts; it was not covered by any statute of limitations. Finally, the asylum request made by the suspect could not become a ground to refuse extradition in the view of the gravity of the alleged offence.

40. Meanwhile, no specific judgment concerning the direct application of the principle *aut dedere aut judicare* has been identified.

Thailand

41. Thailand indicated "no" in response to the question regarding judicial practice.

United Kingdom

42. The nature of the obligation to extradite or prosecute was discussed in the litigation surrounding the extradition of General Pinochet: see *Bartle and the Commissioner of Police for the Metropolis and Others; ex-parte Pinochet [2000] 1 AC 61*; *Bartle and the Commissioner of Police for the Metropolis and Others*; *ex-parte Pinochet [2000] 1 AC 147*; and in *T v Secretary of State for the Home Department [1996] AC 742 (per Lord Mustill)*.

43. The United Kingdom extradites individuals (including British nationals) where there is a request for extradition and provided that the extradition is not barred for other reasons (for example, human rights considerations). Most recent cases have concerned terrorism offences.

44. The United Kingdom has recently prosecuted an individual for alleged instances of torture and hostage-taking occurring in Afghanistan in *R v Zardad*. Certain aspects of the decision are currently subject to appeal.

D. Crimes or offences to which the principle of the obligation *aut dedere aut judicare* is applied in the legislation or practice of a State

Austria

45. With regard to the obligation *aut dedere aut judicare*, the Austrian legislation does not distinguish between certain categories of crimes or offences. Therefore, all crimes and offences punishable under the Austrian Penal Code are subject to this

obligation as laid down in sections 64 and 65 of the Austrian Penal Code (see A/CN.4/571, para. 44).

Croatia

46. The *dedere* obligation only applies to the so-called extraditable offences, determined or determinable as such in an international agreement. If there is no such agreement between the requesting State and the Republic of Croatia, the Croatian Law on International Legal Assistance in Criminal Affairs is applied. The Law provides that extradition for criminal prosecution may be granted for criminal offences that are punishable under Croatian law by a prison term or a security measure including deprivation of liberty of a minimum period of one year, or by a more severe punishment. Should the extradition not be permissible for this reason, it shall not prevent a takeover of the prosecution ("*...aut judicare*"). Therefore, the obligation *aut dedere aut judicare* is applicable to all criminal offences.

Japan

47. In the Japanese judicial system, the obligation to extradite or prosecute stipulated by the treaties listed in section II.A, is implemented on the basis of the Law of Extradition, the Penal Code[63] and other related laws and regulations.

Monaco

48. Following articles 7 to 10 of the Code of Penal Procedure, the principle *aut dedere aut judicare* may be implemented in various cases, including crimes against the State security, counterfeiting, crime or offence against diplomatic, consular or national premises, and torture.

United Kingdom

49. The United Kingdom applies the principle "extradite or prosecute" to the following crimes: torture, hostage-taking, certain offences against civil aviation and maritime safety, and specified terrorist offences.

[63] Unofficial translations of the Penal Code and the Law of Extradition provided by Japan are available for consultation at the Codification Division, Office of Legal Affairs of the United Nations.